1949.

File No. S. Bel. 7

Legal Department

A **BRANCH**

Subject:— Suits Belgaum

Civil Suit No. 494 of 1946 P. 12-F

Madhavrao alias Babasaheb
Harihar Ashtekar --- Plff

Vs.

The Secretary of State for India
in council represented by the
Collector of Belgaum in the
Province of Bombay } - Deft.

For possession of Survey Nos. 26, 36
36 and 39 of the village of Panjanhatti, Taluk
Gokak, with mesne profits. In the alternat
for a declaration that Plff is entitled to
the assessment on these lands and for
recovery of Rs. 1,188 as assessment in
respect of the lands from 1940-41 to 1945

First Appeal No. 22 of 1951

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Suits Belgaum.

C.S. No. 494 of 1946.

Madhavrao alias Babasaheb Harihar Ashtekar

vs.

Secretary of state for India in council represented by the collector of Belgaum in the Province of B'bay.

For possession of survey Nos. 26, 36, 38 & 39 of the village of Panjan-hatti, Taluka Gokak with mesne profits. or in the alternative for a declaration that the plff. is entitled to the assessment on these lands and for recovery of Rs. 1188 as assessment in respect of the lands from 1940-41 to 1945-46.

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1 3

Regular Suit No.494/46.

In the court of the Civil Judge, Senior Division,

Belgaum.

1. Madhavrao alias Babasaheb Harihar Ashtekar,
caste Brahmin, age 49, occupation Land-lord,
of Shahapur, Sangli State .... Plaintiff.

Against

1. The Secretary of State for India in Council
represented by the Collector of the
District of Belgaum in Province of Bombay...Defendant.

Claim for Court fees ... Rs.1,485-5-0

Jurisdiction .. Rs.7,305-0-0.

Herein, the abovenamed plaintiff begs to state as follows:-

1. The lands in suit are entire Survey Numbers and are situate in Panjanhatti in Gokak Taluka and are as under:-

S.No.	Acreage.	Assessment.	Market value.
26.	235-22	Rs. 37-0-0.	Rs. 800/-.
36	422-35	" 66-0-0.	" 2000/=-
38	602-4	" 95-0-0	" 3500/=.
39	255-24	" Nil	" 1000/-.

2. By a special despatch of the Secretary of State for India dated the 15th of March 1860, the Secretary of State for India on behalf of His Majesty's Governmeht agreed to grant in Inam to Konherrao Annaji Shahapurkar, commonly known as Bapusaheb Shahapurkar, the entire village of Panjanhatti and six other entire villages for valuable services already and voluntarily rendered to the Government during the disturbances of 1857-58. A Sanad was accordingly issued in the year 1884 and was received and accepted by Radhabai Bhatar Virupax, the daughter-in-law and heir of the said Konherrao. In virtue of the promised grant, th

herrao became fully entitled to the entir

villages of Panjanhatti and was put into possession of all the lands in the said village except the suit lands. The possession of the lands in suit was not delivered to the grantee under a mistaken notion of the rights of the grantor and the grantee in regard to forest rights and Sheri or waste lands in an Inam village under the summary settlement.

3. All the rights of the said grantee, Konherrao, in the entire village of Panjanhatti including the forest and waste area together with the forest rights and the right to all so-called reserved trees and to all minerals were ultimately inherited by Virupax Chintaman Deshpande Ashtekar. The said Virupax Chintaman transferred for valuable consideration the whole of his aforesaid rights in the Inam village of Panjanhatti in favour of his cousin, the present plaintiff by a registered sale-deed, dated the 23rd of March 1942. Consequently the plaintiff has become entitled to the lands in suit and to possession thereof. On discovering that the grant of the entire village of Panjanhatti was a British Crown grant and that it was made for services already and voluntaril rendered and that it is an Inam under the Summary Settlement and that Government or Belgaum Collectorate and failed ultra vires to deliver possession of the lands in suit under a mistake, the plaintiff called upon the Collector of Belgaum as representing the defendant by a notice dated 17.5.1945, to carry out specifically the contract in the grant in regard to the suit lands by deliverin to the plaintiff the possession thereof. As the plaintiff's notice of demand was neither replied to nor complied with, the plaintiff has to file the present suit forpossession of the suit lands as owner and for an account of the profits and received by the defendant in respect of the suit lands, or in the alternative, for a declaration that the plaintiff is entitled to recover the assessment levied and to be levied upon the suit lands and for an amount of the 6 years' assessment from the defendant in respect of the suit lands, from 1940-41 to 1945-46. The cause of action for thissuit arose when the notice of demand given by the plaintiff went unheeded by the defendant, that is to say, after 17.6.1945.

3

4. As the value of the property in suit is more than Rs. 5000/- this suit is filed within the special jurisdiction of this court.

5. The claim for court-fee is valued as under :-

For possession of the lands - Total assessment Rs.198 X 7½ = Rs.1485.

For account of profits -Rs.5/-.

So, a total court-fee of Rs.125-8-0 is paid.As the court-fee payable on the alternative relief is less than the court-fee paid, no additional court-fee is required to be paid. The value for jurisdiction is the value of the suit lands and the value for account, that is to say, Rs.7300/- Rs.5/- = Rs.7305.

6. Notice of this suit as required by Sec. 80 of the Code of Civil Procedure, has been duly given to the defendant.

7. The original Sanad issued by Government to the grantee was required by Government to be produced before them many years ago. It is still with Government. A list of documents relied upon by the plaintiff is annexed to the plaint. The plaintiff prays for leave toproduce additional documentary evidence later on, if and when neeessarily

Drafted on 7.11.1946. Presented on 8.11.1946-

8. The plaintiff prays for a decree -

(1) for possession, as owner,of the lands in suit and

(2) for payment on account of the mesne profits of the suit landsreceived by the defendant.

In the alternative -

(3) for a declaration that the plaintiff is entitled to recover the assessment levied and to be levied in respect of the suit lands, and

(4) for the recovery of Rs.1188/- being the assessment of the suit lands due from deft.from 1940-41 to 1945-46.

(5) for costs of suit and

(6) for any relief either in law or in equity to which plff. may be entitled.

7th November 1945. Sd.

Plaintiff.

12 S

Belgaum Civil Suit No.494 of 1946.

A The suit is filed by Madhavrao alias Babasaheb Harihar Ashtekar against the Secretary of State for India in Council. Plaintiff claims possession of Survey Nos.26, 36, 38 and 39 of the village of Panjanhatti Taluka Gokak with mesne profits. In the alternative the plaintiff asks for a declaration that he is entitled to the assessment on these lands and for recovery of Rs.1188/- as assessment in respect of the lands from 1940-41 to 1945-46. The plaintiff makes a claim to these lands as the purchaser for valuable consideration of the Inam village Panjanhatti from Virupax Chintaman Ashtekar by a registered sale-deed of 23rd March 1942.

The suit lands are forest lands in the Inam village of Panjanhatti. This village along with six other villages was held in Inam by one Annaji Narsinha on his death in 1847 A.D. these villages were resumed by the British Government in accordance with the Inam Commission's decision. In 1859 on the recommendation of the Bombay Government, the Secretary of State* sanctioned the grant in Inam of these 7 villages to Konherrao Annaji alias Bapusaheb Shahapurkar in recognition of his meritorious services to the British Government during the mutiny of 1857. The grantee was informed that formal Sanad would be issued in due course.

* R.S.Vol.68/1866 p. 215

When the despatch of the Secretary of State was communicated to the Alienation Revenue Commissioner, that officer atonce raised the question whether the grant included forest rights. Government having considered the matter decided that the grant did not include such rights in accordance with the Circular Order issued in 1851 (Govt.Resolution No.2390 dated 4th July 1860). The Collector of Belgaum also informed the Inamdar on 4th May 1860 that the grant did not include forest or abkari rights.* Since then the

60. p. 219

60 p. 221

This reference is not available.

Inamdars were informed from time to time that they had no claim to teak trees and other forest rights in these villages.

In 1882 the forest lands in the villages of Panjanhatti and the six other villages were declared to be protected forests under Chapter IV of the Indian Forests Act of 1878. Although the abkari and forest rights were from the first excluded, the Inamdar and his heirs continued trying to get these rights or to have them recognised as already granted. Therefore in Govt.Resolution, Revenue Department, No.4762/73 Confdl. dated 15th May 1906 the position of the Inamdar in respect of his right was again made clear.

Confdl. R.O. Vol 578/1906 p 35

Finally by Govt.Resolution, Revenue Department,No. 692/24 Confl.dated 22nd January 1914 the forest lands and these seven villages including the land in the present suit were declared to be Reserved Forests under section 19 of the Indian Forests Act of 1878 (now section 20 of the Indian Forests Act,1927).

File I p 21

The village of Yadalgud was another of the seven villages granted in Inam to Konherrao. In 1922 that village was purchased by one Ramchandra Narayan Kini, a retired Government servant from the successors of the original Inamdars. He then made representations to Government for the restoration of Sur.Nos.37 and 8 which were forest lands in the village of Yadalgud but Government declined to reopen the question. Thereupon Mr.Kini filed Civil Suit No.1 of 1926 in the District Court at Belgaum. It was later transferred to the Court of the First Class Subordinate Judge, Belgaum, and renumbered as 295 of 1927. The plaintiff in that suit also claimed possession of the forest lands and mesne profits.

File put-up below.

Government defended that suit on various grounds, which were :-

Go p 53-60

1) That the Indian Forests Act of 1878 provides for a special mode of getting injuries under the Act redressed and that therefore the Civil Court had no jurisdiction;

2) That the suit was not maintainable under section 42

of ...

of the Specific Relief Act;

3) That the suit was time-barred under article 144 of the First Schedule to the Indian Limitation Act inasmuch as it had been filed after the expiration of 12 years from the year 1882 when the lands were declared to be protected forests under section 28 of the Indian Forests Act of 1878 (now section 29 of the Indian Forests Act of 1927);

4) That the inam grant was a grant of the land revenue alone and not of the soil and that forest rights were expressly excluded from the grant;

5) That even assuming that the Inam included a grant of the soil it did not follow that the grantors had no right to reserve forest rights or rights to trees to themselves, that it was open to the grantor to reserve to himself the rights to trees while parting with the land on the land on which they stood and that under section 29 of the Indian Forests Act, 1878, it was ~~open~~ not necessary that the land should be the property of Government provided Government owned the forest produce in any land held by others; and

6) That the ruling in I.L.R. 29 Bom.,480., which was further reported in I.L.R.34 Bom.432 on which the plaintiff relied was based upon a mistaken admission of the Government Counsel in that case and the Counsel in that case had failed to urge that although Inamdar may have a right to revenues of the land Government could declare it to be reserve forest ~~if~~ under section 3 if Government were entitled to the forest produce of the land.]

Judgment at p. 91 of suit file.

P The Court decreed the suit in Mr.Kini's favour. It found on all issues against Government except that it held that the forest rights ~~will~~ were reserved from the grant made to the plaintiff's predecessors. On the point of limitation the Court held that the starting point of limitation was not the date when the lands

were declared to be protected forest in 1882 but the date when they were declared to be reserved forest in 1914 and the suit having been filed within 12 years from that date was in time. On merits, the Court held that the grant was of the entire village and that even on the assumption that the ~~xxx~~ grant was of the revenue alone, lands unassessed at the date of the grant were not excluded. The Court further held that although forest rights were reserved from the grant, it did not imply that when Government declared these lands to be reserved forest, these lands were forest lands or waste lands which were the property ~~x~~ of Government or over which Government had proprietory rights or to the whole or any part of the forest produce of which Government was entitled within the meaning of section 3 of the Forest Act.

The Court decreed the plaintiff's claim on the strength of the rulings in I.L.R. 29 Bom. 480 and I.L.R. 32 Bom. 432. Under section 3 of the Indian Forest Act, any forest land or waste land which is the property of Government or over which Government had proprietory rights or to the whole or ~~xx~~ any part of the forest produce of which Government is entitled can be constituted a reserved forest. The suit lands were unoccupied lands on the date of the grant. Under the rulings aforesaid the Inamdar could occupy and make use of all such unoccupied lands even though he be a grantee of revenue only. The Inamdar was therefore entitled to claim possession of the lands and it was doubtful whether they could be constituted a reserved forest. To this extent, Government were not on very firm ground in that case.

Sent. Ind. p. 85

On the question of limitation, however, the District Government Pleader suggested that by declaring the suit lands to be protected forest in 1882, Government either ~~claimed~~ claimed these lands as their own or asserted their right to forest produce. Their claim was not disputed by the Inamdar for more than 12 years and it could not then be challenged under article 144 of the Limitation Act. Having obtained some proprietary interest by adverse claim or title for more than 12 years, Government

were ...

were competent to declare the lands to be reserved forest under section 3. On this ground, Government decided to prefer an appeal and the institution of the appeal was sanctioned in G.R.L.D.No.9035 dated 21st December 1931.

Suit File p.139

C Mr.Kini ~~xxxxx~~ submitted a Memorial to Government in which after dwelling at length upon the merits of this case he prayed that in view of his loyal and diligent services to Government, the Government should not continue the fight but should withdraw the appeal. As Government's case was merely arguable and not particularly strong, it was decided to withdraw the appeal and the case was ultimately compromised upon certain terms which are set out in the consent decree. C

60. p 177

60 p 255

D In the present suit filed by Mr.Madhavrao Ashtekar the contentions and reliefs claimed are almost identical to those in Mr.Kini's suit. The Divisional Forest Officer has recommended that the suit should be defended on the same grounds as were taken in the previous suit. An exhaustive brief setting out all possible grounds of defence was prepared in that suit for the guidance of the District Government Pleader and it is not possible to add anything more to it. However, although Government's case is not very good on merits, on one point at least, namely, limitation, Government are in much stronger position now than in 1926. In Mr.Kini's suit the Court held that limitation began to run against the plaintiff from the date when the lands were declared as reserved forest in 1914. The same line of argument may be adopted in the present suit and it may be contended that the suit having been filed after the expiration of 12 years from the date on which the lands were constituted reserved forest under sec.3 of the

Forest Act is time-barred under art.144 of Schedule I to the Indian Limitation Act. Under the ruling in 32 Bom., 432, the Inamdar even though grantee of the royal share of the revenue could occupy and make best use of all such lands as were unoccupied at the date of the grant. If the suit lands are neither forest lands nor waste lands, which were the property of Government, or over which Government had proprietary rights or if Government are not entitled to the whole or any part of the forest produce of the said lands, Government had obviously no right to constitute them into reserved forest. Therefore when these lands were constituted into a reserved forest, the proprietary rights of the Inamdar were adversely affected and consequently the suit ought to have been filed within 12 years from the date on which the lands were converted into reserved forest. Government has, therefore, a strong case so far as the point of limitation is concerned. D

E In addition another technical plea must be taken. The suit has been filed against the Secretary of State for India in Council, a body which has ceased to exist since 1937. The suit is, therefore, prima facie not maintainable as framed at present. The proper authority to be named as defendant is the Province of Bombay. However, the plaintiff may perhaps get over this difficulty by seeking an amendment to the plaint. The amendment may possibly be allowed since the notice given by him under section 80 of the Civil Procedure Code is free from any legal objection. Nevertheless the formal objection on the frame of the suit should also be taken. F

If approved, the District Government Pleader may be requested to defend the suit on the lines of the brief prepared in Mr.Kini's suit and also on the additional grounds of limitation and frame of suit as discussed in this note. Copies of the brief and the Court's judgment in Mr.Kini's suit with a copy of the consent decree may be forwarded to the District Government Pleader for guidance.

RW 17/6/48

No alternative claim for assessment-remissions. This kind of claim was not made in Kini's suit.

RW 18/6

DSP
21/7

Log 23

73 85

In the court of the Civil Judge, Senior Division,
Belgaum.

Regular Suit No.494 of 1946.

Madhavrao alias Babasaheb Harihar Ashtekar,
Hindu Brahmin, adult... ... Plaintiff

Vs.

The Secretary of State for India in Council
represented by the Collector of the
District of Belgaum in the Province of Bombay ... Defendant.

The following is the written statement of the defendant in this suit :-

1. The suit is not maintainable in its present form. The plaintiff has named the Secretary of State for India in Council as the defendant. The Secretary of State for India in Council has ceased to exist since 1937. Under section 79 of the Civil Procedure Code, the authority to be named as defendant should have been the Province of Bombay. The suit is therefore prima facie not maintainable as framed at present.

2. The plaintiff's allegation in paragraph 3 of the plaint that the cause of action for this suit arose after 17th June 1945 when the notice of demand given by the plaintiff went unheeded by the defendant is incorrect and is hereby denied. This defendant submits that the cause of action, if any in this suit, arose on 22nd January 1914 when by Government Notification, Revenue Department, No.693 dated 22nd January 1914, the suit lands were declared to be reserved forests under section 19 of the Indian Forests Act, 1878. When these lands were constituted to be a reserved forest, the proprietory rights of the Inamdar and his successors in title were adversely affected and consequently, the suit ought to have been filed within 12 years from the date on which the lands were converted into reserved forests. The defendant therefore submits that the present suit is clearly time-barre under Art. 14 ~~to~~ of Schedule I to the Indian Limitation Act therefore deserves to be dismissed.

3. The suit is not maintainable in its present form under section 42 of the Specific Relief Act. It was necessary for the plaintiff to sue for a declaration of his proprietory rights to the suit lands and for an injunction restraining Government (defendant) from interfering with those rights.

4. Without prejudice to the contentions in the preceding paragraphs, the defendant does not admit that the plaintiff is vested with all the rights and privileges including the rights over forest lands in the village of Panjanghatti. The plaintiff is not the proprietor of the village, the grant being only of the royal share of the revenue with express reservation of forest and abkari rights. The Sanad for the village issued by the Collector to the grantee was in a mistaken form and it is not binding upon the defendant.

5. The plaintiff's allegations in paragraphs 2 and 3 are not admitted. It is denied that the entire village of Panjanghatti including the forest and waste area together with the forest rights and the rights to the reserved trees and all minerals were inherited by Viruparkash Chitaman Ashtekar. The defendant submits that the forest lands were excluded from the grant made to the plaintiff's predecessor and the defendant as the owner of the suit land and as having forest rights in the land, was entitled to declare the suit lands to be reserved forests under the provision of the Indian Forest Act of 1878. The plaintiff is not, therefore, entitled to possession of the suit land.

6. The plaintiff is also not entitled in the alternative to the assessment in respect of the suit lands. The defendan submits that the only right which the plaintiff and his predecessors had over the forest lands was a right of grazing and a privilege of cutting bushes and low jungle which was granted by and terminable at the pleasure of Government. This right of grazing was conceded in lieu of payment of jury of one anna per rupee on the grazing valuation of the forest lands which was fixed at -/2/6 per acre. The suit lands were throughout unassessed waste . The figures

13 75 85

given by the plaintiff in paragraph 1 of the plaint are the figures of the grazing valuation of the forest land at -/2/6 per acre and not the figures of land revenue assessment. The defendant, therefore submits that the plaintiff's alternative claim of assessment in respect of the suit lands is entirely misconcieved and untenable.

7. The plaintiff is not entitled to any relief and the defendant submits that the suit should be dismissed with costs.

Belgaum, 1948.

District Government Pleader,
Belgaum.

I, , District Government Pleader, ~~XXX~~ Belgaum, do hereby declare that what is stated in paragraphs 1 to 7 above is true to the information received and believed to be true. This verification is made at Belgaum on day of the month of 1948.

District Government Pleader, Belgaum.

IS .117 +75

Received on 8-11-1946

Registered on 15-11-1946.

Decided on

Duration

In the Court of the Joint Civil Judge, S. Dn, Belgaum.

Spl. Reg. Suit No. 494 of 1946.

Ex.

Pleaders.

1. Madhavarao alais Babasaheb Narthar Astekar Caste Brahmin, Age 49, Occ. Land Lord of Shahapur. ... . } Plff

Mr. V.D.Belavi.

Vs.

1. The Secretary of State for India in Council represented by the Collector of District of Belgaum. .. .. } Deft.

Mr. B.V.Jakati. Dist. Govt.Pleader,

Claim Rs. 1,485-5-0 for Court fees.

7,505-0-0 " Juridiction

The plff sues to recover possession of the suit lands and to recover the mense frpfits and costs of the suit In the alternative, he sues to recover the future assessment amount of the suit lands to-gether with the past dues of Rs. 1188/- in respect of 6 years from 1940-41 to 1945-46.

The plff [illegible] his case in the plaint as follows:-

The suit lands (four in number) are situated in the Punjanhatti village. The Secretary of state for India on behalf of His Magisty's Government agreed to grant the suit village and others to plff's predecessor in title, Konherao alias Bapusaheb for valuable services rendered by him during the Indian Mutiny of 1857-58 and granted the sanad in 1864. Konherao became an titled to those villages including the suit one and all the lands except the suit lands have delive-red into possession to him. The suit lands were not hands over th the grantee mistaken notion, until regard to the forest rights etc. under the summery settlement. The plff is the purchaser of all the rights of Konherao's heir Virupax in 1942 and thus entitled to get possession of the

suit lands. The Govt. over the Belgaum Collecterate had failed to deliver possession of the suit lands under a mistake and the plff served the notice to the deft on 17-8-1945 to deliver possession of them by carrying out the contract in the grant in regard to the suit lands.But the deft failed to comply with plff's request. Hence the present suit was filed. The cause of auction for the suit is given by the plff after 17-8-1945.

The deft filed the W. S. at ex. 18 and contended inter alia that the suit in its present form was not maintainable as the Secretary of State for India ceased to exist after 15-8-1947. He challenged the correctness of the date of cause of action for the suit and alleged that he had become theowner of the suit lands by adverse possession. He contended that the suit was barred by time both under articles 14 and 142 of the I.L.Act as the plff did not file the suit within the periods of the limitatio from the date of the Govt. Resolution No. 693 dated 22-1-1 passed under the Indian Forests Act of 1878. He alleged that the suit lands had been excluded from the grant and that the sanadsissued by the Collector of Belgaum were in a mistaken form andthhs were not at all binding on the deft. He further alleged that the grant was in respect of Royal share revenue only and that the plff was entitled to have the grazing right and the privilage of cutting bushes and law gungles in the forests(the suit lands). He challenged plff's right to the possession of the suit lands or to the assessment of them. He prayed for his cost

The following issues were framed by one Mr. B.K.Khade at ex.38.

Issues

1. Is it proved that the suit lands were excluded from the grant when the village of Panjanhatti was given to theyk plff's predecessor-in-title?

2. Does the gift prove that the grant is a grant if Royal share of revenue only?

1/ #9 127

3. Is the suit in time?

4. Is plff entitled to the possession of the lands?

5. If not what amount is plff entitled to get either for assessment or for grazing fees?

6. What decree?

My findings

On issue No.1. Sanads had been issued by the Collector inclu-ding the suit lands but the deft did not - recognise the inclusion as correct.

" 2. Does not survive.

" 3. No. (the deft has also proved these title to the suit lands by adverse possession from 191

" 4. No.

" 5. Nil.(No reliefs was sought in respect of grazing fees)

" 6. As per final order.

Reasons.

Issues Nos.1-5. All these issues can be taken up to-gether and dealt with at one place conveniently. The plff filed the - present suit against the Secretary of State for India in 1946 and at that time the office of Secretary State had not ceased to exist. The suit was therefore, filed properly against him them. The plff got the title of the suit in respect of the e deft changed by ex.95 and there is therefore no technical - defect remaining in the suit. I thus repelling the objections taken by the learned Govt. Pleader,record my findings on this point against the deft as this point was raised for the first time by the learned Govt. Pleaderat the time of the argument.

Before discussing the points in usual, It would be proper to trace the history of the suit lands first. These - facts were refused by the learned pleader for the plff at the time of his argument and deft's documents too, are clear evi them. Seven villages and 20 lands in other villages had been resumed by the Govt.in 1847 and they were ordered to be regra -ted to Plff's predecessor-in-title, Konherao alais Bapusaheb in 1857 for his meritorious services in the mutiny.Accordingl

the possession of those villages abd 20 other lands (except the suit 4 lands of Punjabhatti) were delivered to Konherao in the year, 1860. It appears that Konherao requested the Govt. to remit the payment quit rent or judi that was recovered from him in respect of these villages and lands and to grant the Abkari and Forests (i.e the suit lands) to him. The correspondence statred from 1860 to 1867, exhs. 79-83 and it was finally settled in 1867, ex.77 by the Govt. that the Collector should offer Konherao entire release from lump payment of - Rs. 419-8-0 on his consenting to pay judi or quir rent and that the Abkari and Forests cpuld not be assigned to him. It was further decided that the Abkari and Forests were assigned to him the amount payble on account of quit rent would be reduced and he would receive precisely what it was intended to grant him." Thus, it can be gathere from ex.77, that the choice was given to Konherao to elect The Govt. had decided by G.R.No. 2390, ex.81 in 1860 that the rules quoted by the Revenue Comaissioner for alienation were applicable to the grant, made to Konherao, meaning that the right of the falling trees in the forest(i.e.the suit lands) should never be alienated. Konherao had been informed of this rule but he was allowed to remove bushes and low jungles in 1860. The forst department was selling the trees of the Forest(suit lands) and recovering the sale proceeds. Konherao complained in 1879 to the effect and demanded about Rs. 3213/- from the Govt. in respect of the trees(timber, teak etc.) sold by the forest - department in the year 1878. But the Govt. refused to allow him to remove timber from the suit lands but he was allowed only to continue his right of felling bushes and low jungles in them as before. This decision wasx arrived at in 1889, ex.87.

5. It appears that Konherao began to cut even timber trees with an excuse of gis right to fall bushes and that

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the forest department objected to this. The correspondence went on from 1879 on wards and it was then resolved by the - Govt. in 1880 that the portion of the forest should be closed for 20 years to all including Konherao's family and that the Inamdars (Konherao's' family members) should be allowed to cut trees in the portion of the forest assigned for the purpose, exhs. 85 to 88. But the question of the paying of compensation to the Inamdars for the closure of forests for 20 years - remained undecided, The correspondence again went on about the point and ultimately it was decided that the suit lands should be treated as protected Forests under sec. 29(6) of I.F.Act, Exhs. 90& 86& 89. The sanads had been issued to Konherao in 18 1884, granting probably the suit lands also him. The said - sanads are not before me and the plff, too. did not produce the certified copy of any of them. He, however, produced the priv- -ate copy of one of the said sanads with ex.65. However,as the deft indirectly admitted the point, raised by the plff as - containing in these sanads, at ~~See Ex~~91 there is no necessity to hold on inquiry as to what in the sanads,contained actually The Govt. decided in 1891 after hearing the contentions of the heirs of Konherao that the sanad wrongly included the forests and thus invalid and that they would not be allowed to trees - pass on the forests(i.e the suit lands) as per ex.91. The - heirs of Konherao(Ex. Inamdars) again approched the deft - complaining of injustice, done to them and the latter then - consulted the former if they would give their consent to the issuing of the fresh sanads in a just and proper manner, ex.7 The history of the suit lands and the attidute of the parties in respect of them from the beginning, are beautifully starte in the letter of the Collector(reproduced in the Govt. Resolu- -tion No.4762(confdl) of 1906, ex.84). It is, therefore, - obvious that the Govt. challenged the correctness and the - authority of the sanads, issued to the Inamdar, Konherao by the Collector in 1884, on the ground that the Collector issue them through mistake. The Inamdars sometimes yeilded to the

Government and agreed to take the new sanads as per desire of the latter. But they againinsisted that the suit lands should be delivered to them along with the trees thereon as per terms of the origional sanads. After exchange of of some communication, the Govt. declared finally that the suit lands were reserved Forests under the Forest Act, in the year1914 by G.R.R.D.No.624/24(con) dated 22-1-1914,exs. 92 and 93. Thus is the history of the suit lands from 1847 to 1914.

4. It is clear from exhs. 24-30 and 94 that the suit lands form part of the village, Punjanhatti, which was granted to Konherao along with others and that the quitrent of Rs.24-9-0(at annai in a ruppe) was recevered from the grantee and his heirs in respect of the lands of the entire village, Punjanahatti(excluding those which were held by the persons prior to 1857). The learned pleader for the plff - argued that the Inamadars availed of the concession, given by the Govt. and accepted the alternative offer to reduce the quit rent out of Rs. 457-12-0. the full assessment of 20 lands (included the grant) in consideration of the Forest Rights ever to the suit lands. But there is no document on record(not even a copy of it) to show that the Inamadars agreed to pay the assessment in consideration of the forest rights. The plff is gussing only from the calculation of the assessment of the lands as shown at exhs 24-30. No assessment receipt too, was produced in the suit by either of the parties. If the Inamadars ahd agreed to select one of the alternatives, offered by the Govt. there was no necessity for the Govt and the Inamadars to held correspondence once again from the date of the said G.R. and there was no point for the passing of the 2 new G.R. in 1914. The plff did not allege in his plaint that the Inamadars accepted the alternat offer made at ex.77. The learned pleader for the plff argued that the Bombay Government could not control theorder of the Secretary of State for India.(ie. His Majisty's Govt) by -

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.....] the G. Rs. and that the deft(the Govt.) had no right over the Forests(the suit lands) of the suit village, which had been granted to Kenheree by His Majisty's Govt. But the plff should know that the Govt. informed the Inamdars that the Did not intu put the orders of the Secretary of State for - India connectly and properly. Then there is no point in sayin -ing that the Bombay Govt. had disregarded the orders of the Secretary of State. The plff is not in possession of the true copy of theorder of the Secretary of State or of the sanads. It can,however,be gathered from deft's correspondence that - the Bombay Govt. gave the applicant interpretation to the ord- -er of the Secretary of State and stated at ex.77 that it was share mistake,committed by the Collector in issuing the - sanads by including the Abkari and forest rights over the suit lands.

5. The learned pleader for the plff argued that the deft was estopped from asserting its right ober the suit lands in view of the admission of the Inamadars' title over the lands, in documents(i.e. the revenue records) prepared by itself as per exhs.24-30 and 94; These records were prepared by the, Govt depending on these sanads(which has been declared as - wrong) and they cannot prove that the Govt. admitted in the title of the Inamadars to the suit lands. These records were not the private records of the Govt. and they cannot operate as an estoppel against the deft through the plff~~xxx~~ can take advantage of them to prove his title. The learned pleader for the deft suggested that the figures, given by theplff in his plaint para 1 were not in respect of quit rent but they were the grazing charges recovered from the Inamadars at annas ½ per acre. On perusal of the documents, exhs. 24-30 and 77,79-88,91,92 it looks probable that the Inamadars agreed to accep the concessions of cutting bushes and low jungles and recover -ing grazing fees from the cattle owners who grazed these - cattle in the suit lands, by paying quit rent or grazing - charges at ½ annas per acre. However, it is certain that the

Inamadars did not exercise any other right over the suit lands at any time, except these two rights, stated above and that the Inamadars' attempts to get possession of the lands were proved unsuccessful all along.

6. The learned pleader for the plff argued that the Govt. had the forests rights only in unalienated villages and not in the alienated village(Punjannahatti) in view of the possessions of sections 40 and 41 of the Land Revenue Code. He however, stated that the forest right of the Govt. in the alienated villages extended only over certain trees of teak, timber, sandlewood etc.and not over all the trees. He further argued under section 20,22 and 23 of I. contract Act that a legal or unqualified mistake would not make the contract voidable- But the learned pleader should note that all these questions do not arise in the present case, as the deft(Govt) never admitted Inamadars' title over the suit lands. The Govt. never entried into a contract with Konherao and I am prepared to treat the suit grant as a contract. It was in reality a gift or crown grant, made to Konherao in recognition of his meritorious services during the mutiny of 1857. The Crown was not bound to make such a grant to the persons who do meritorious services and Konherao could not legally ask the return from the Crown for his services, by way of right. Thus sections 20,22 and 23 of the I. contract Act are not applicable to the present case. As the suit lands(according to the deft) were not at all given to Konherao, the question of considering the applicability of the provisions of L.R. Code would not also arise, in the present case, even though the suit village is an alienated one.

7. However, from the revenue records, exhs, 24-30 and 94, it is clear that the entire village(including the suit lands) is shown as belonging to Konherao. The Collector issued the sanad of this village in 1884 thinking that the Secretary of State ordered the grant of the

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entire village(including the suit lands). But the Bombay - Govt. interpreted the said order of the Secretary of State in a different manner, saying that the suit lands being forests could not be granted to Konherao. The Government, therefore, refused to give the possession of the suit lands to the - Inamadars, on the ground of mistake in the sanads. The Inamadars, did not approach the Civil Court to establish their right over the suit lands early, when the equivocal intention of the deft was made known to them, several times. They wasted their time unnecessarily in the holding correspondence with the Govt. and probably thought of taking possession of the suit properties on the strenght of the said sanads. As all these efforts proved futile, they alienated their alleged right to the present plff and he has come to the Court now.

8. The names of the Inamadars were entried in the R.Rs. - as per sanads and the plff's name too, was shown as the Inamadar after his purchase of the former Inamadar's right by ex.31, - even in 1945, as per exhs. 24-30 and 32. From these entries alone one cannot say that the Govt. admitted the title of the - Inamadars or the plff to the suit lands as him. The Govt. had openly and specifically refused to deliver possession of the suit lands to the Inamadars from the beggining. The learned - pleader for the plff argued that the deft had not proved - exclusion of the Inamadars from the lands in suit though no - delivery of possession of them was made and that the deft had not become owner by the adverse possession. He further argued by quoting a legal maxim, " one who alleges contradictory things should be believed," that the Govt. had recognised the plff or his predecessors-in-title as owners in their own(Govt) - records and that they(Govt) should not be allowed to plead - adverse adverse possession. The Inamadars made requests to Govt several times from 1884 to 1914 to treat the former as owners of the suit lands and to deliver possession of the same to them on the strenghh of the entries in the revenue records. The - learned pleader, next argued that the suit lands were the forest

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lands), being in capable of holding actual - possession of them continuously and that the possession of them should be resumed to have remained with the - Inamadars. But when the plffhimself admitted, even at the time of having, that the Inamadars did not get the- possession of the suit lands at any time, there is no n necessity to have recourse to presention. He then, argued that the deft did not hold the possession of the suit lands adversly or openly as the latter did not get the Govt!s entered in the Record of Rights in place of the Inamadars. He relied on several rulings of various High Courts, viz. I.L.R.38 Bombay 227; ILL.R. 27 Bombay 43;I.L.R.30 Madras 280;Bhupadra.Vs.Jatindranath I.L.R.62 Calcatta 921; Secretary of State .Vs. Devendralal A.Q.R. 1934 P.C. 23; Maharaj shinh .Vs.Brijinath A.Q.R- 1935 P.C. 36, in support of his - arguament. I entirly agree with the principles, laid down in all these rulings and also fellow the deservations, - made in them. But in the present case, none of these - rulings can be made applicable as the facts and circumstances of the present case are not in any xxxxx xxxxx way, - favourable to the plff.The deft openly and directly denied Inamadar's right over to the suit lands to these knowledge in 1914 and adverseness stated from that year, though e exclusion was from the beginning.

9. The learned pleader fer the plff referred to page 2297 of Chitab's Limitation Act and argued that the possessio of the suit lands of the deft was under a mistake and that such a possession would not under law amount to adverseness. But I am not prepared to agree with the learned pleader - even in this respect as the deft did not hold possession of the suit lands under a mistake; but the Govt. stated that there was mistake in the sanads, granted to Kenherao and that they would not deliver possession of those lands to him or his heirs as those lands could not be granted to him. This fact was after brought to the notice of the Inamadars,too. He then, made the alligations against the -

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Govt for having kept all the orders fraudulently in secret and stated that the Inamadars had relied on the revenue records Exhs. 30-32, 94 etc. But I am not prepared to accept these alligations as true. The Inamadars were making the applications after applications to get possession of the lands and the Govt. were replying to these applications. However, in 1914, the Govt made their intention and position clearly understood by publishing the notification in the Bombay Govt. Gazette openly in 1914,(vide exhs. 92 and 93) that the suit lands were the " reserved forest lands" of the Govt. The plff has thus failed to point out that the Inama-dars were just away of the knowle--dge of theright to sue for possession either on account of secrecy or fraud. The Inamadars did not make use of the suit properties as owners but on the other hand they were all along requesting the Govt. to allow the former to deliver possession of thèse lands to them. The principles, laid down in I.L.R 28 Bombay 488 or I.L.R 28 Bombay 227 cannot be made applicable to the facts of the present case. It was held in official receiver .vs. Govind A.I.R 1940 M. 798 that mere most of title to suit lands would not entitle to plff.xHmxkxkkkkx to a decree for - possession. I may rely on this ruling. The plff cannot rely - merely on the extracts in the revenue records; and say that he proved his title to the suit lands. although the deft refused to recognise him as such and to deliver possession of them. His suit priarily is barred under Art 142 of the I.L.R Act. However, the deft has been able to shew that the plff and his predecessors -in.title were excluded openly for enjoying the suit lands to their knowledge, from the very beginning generally and from 1914 particularly. Exhs . 30-32,61,77 etc are clear on the plaint. The ought to have come to the Court within 12 - years from 1914 to avoid the operations of Acts 142 and 144 of the I.L.R Act, if he wanted to rely on the origional sanads and the entries in the revenue records. I rely on 32 I.C 488 in support of my win and hold that the suit was barred under Arts 142 and 144 of I.L.Act.

10. The learned pleader for the plff argued that the present suit was for the enforcement of specific performance of a contractor or agreement and as such the appropriate article that could be made applicable to the facts of the present case would be Article 113 of the I.L. Act and not Act 142 or 144 or 14. But in the present case, there is neither an agreement nor a contract, entried - into between the parties. The Crown made a gift of the - villages and lands to Konheras without entring into any agreement but being pleased with him for his services. Arguement which is always bilatreal requires objection and there was no objection or liability which could be enforced against the Crown, Even in the case of the - specific performance of a contract, time would began to run from the date of the refusal. The deft refused to deliver possession of the suit lands to the Inamdars clearly - more than once and finally in 1914, ex.93. The plff did not come to the Court within 12 from that year, so the ~~px~~ present suit would be barred even under that Article(113).

11. The learned pleader for the plff then, argued that the Bombay Govt. were the trustees for Konhera o as the Crown(Secy. of State on behlf of Crown) ordered the Bombay Govt. to give ~~pxxxxxxxxx~~ 7 villages and 2c lands and as it was the duty of the Govt. to give possession of ~~xhexxxxxxxxxx~~ to him. He stated that the deft was - holding possession of the suit lands wrongfully but were the trustees for the Inamdars that the suit was not - therefore, barred by time, He relied on I.L.R 46 M. 259; I.L.R 29 B. 267; I.L.R 29 Cal.716; I.L.R 32 B. 594; I.L.R 37 Bom.446; I.L.R 39 Bom.572 and I.L.R 4 Alh.187 etc. in support of his arguement. The Bombay Govt, were the agents or the servants of the Crown and they say that the Collector committed a mistake in issuing the sanads including the forests and that they were therefore unwilling to deliver possession of the suit lands.In such circumstances, I fail to understand the trust was created in the present case.

The Crown granted some properties by way of gift and the Bombay Govt. on behlg of the Crown say that the suit lands were not intended to be given to Kesheruo. Thus, there is no trust in the present case or the plff cannot take shelter under that - Act also.

18. The learned pleader for the plff tried to take - shelter under the previsions of section 29 of the L.L.Act by saying that the contract under sec.25 if the I.Contract Act was exempted by sec. 29 of the L.L.Act and that there was no bar of limitation for the present suit. But I am unable to agree with the learned pleader as no questions of these sections arise in thepresent case.

19. He then,stated that the Court should grant the special relief to the plff from the bar of limitation by taking into - consideration, the facts and the circumstances of the case and the possession of thepartiesBut the learned pleader for the plff should note that the Courts have no power to extend the - period of limitation under any circumstances and I am, therefore helples to show any concession to the plff; if his suit is - found barred by time under the previsions of the L.L.Act. The result is that present is suit is barred by time under Art 142 of the I.L.Act. The deft-Govt. have also proved that they have become the owners of the suit lands by adverse possessionfor having held them as owners existing the plff and his predecessors-in-title, for more than 12 years next before suit i.e. - 1916. When the plff fails to establish his right to claim - possession of the suit lands, his claim for fast mesne profits will not survive. Moreover,plff's claim for the amount fast mesne profits is barred under Art 120 of the L.L.Act as no suit was brought within 6 years from 1916.

14. The plff prayed in his plaint alternatively that he was at least entitled to get the assessment of the suit lands at the rate of Rs/- 198. per year. The Govt(accepting the - proposal of Mr. Sahan karr, the then Secy. of State) gave the option to the Inamdar in 1869 Ex.85 either to receive -

7 villages only free from quir rent or to retain both the lands(i.e.20 in number) and 7 villages by saying judi er quit rent,ex.77. The Inamdar made a petition to the Govt. complaining that the Collector was preventing them from cutting ~~them~~ timber in the forests (i.e the suit lands) though they were entitled to hold possession of the entire villages, including the suit lands~~or~~ the trees thereon. But the Govt replied to the Inamdars in 1888, ex.87 that they would be allowed to remove only bushes and low jungles from the suit lands. Later, the Inamdars were allowed to - recover the grazing fees from the cattle owners. The Inamdars refused accept the co-operation of Rs. 80/-in heir of their rightfor grazing fees ~~from~~ and the Govt. considered then, the exact rights of the Inamdars over the forests(the suit lands). The Govt. accordingly declared - under sec.~~26~~ of the Indian Forests Act~~of~~ 1878 that the suit lands were protected forests in 1888, ex.61 and that they were reserved forests in 1914, exhs, 92 and 93. From all the correspondence specially from ex. 77, it can be gathered that the Govt. admitted the claim of the Inamdars in respect of the assessment of the suit lands in 1867 and that they - allowed the Inamdars lost low jungles in the suit lands, in ~~lieu~~ of these right to the assessment probably. But it was not definite and the plff himself did not explain it in his plaint and deposition as to how he can base his alternative claim. In any case, in 1914, the Govt Refused to give possession of the lands or the assessment of them to the plff's prede--cessors-in-title. The Inamdars ought to have come to the Court to establish the right to ~~re~~cover the assessment of the suit lands(Rs. 190/- per year) within 12 years from 1914. The present suit for the alternative relief is also barred under Acts 142 and 144 of the L.L.Act. The learned pleader for the plff argued that the right to claim assessment - of the lands is a Crown right and as such it could not be ~~con~~controlled by L.L.Act, But the learned pleader for the plff should note that the plff is not ~~the~~ Crown but that he has

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come to the Court to establish his right against the Crown it self. He can succeed only when he fulfils the conditions of the comeon law. The plff tried his utmost to take shelter under some provision of law to avoid the base of limitation but he could not succeed in his attempts. He thus fails in his suit in toto.

15. For the reasons, I record my findings on all these issues against the plff but in favour of the deft and pass the following order.

O R D E R.

Plaintiff's suit stands dismissed. The plff do pay the costs of the deft and do bear his own.

Sd/ M.H.Kazi.
Jt. Civil Judge, S. Dn,
Belgaum.

19-8-1949.

Suits:

Belgaum.

For possession of Survey Nos. 26, 36, 38 and 39 of the village of Panjanhatti, taluka Gokak, with mesne profits. In the alternative for a declaration that plaintiff is entitled to the assessment on these lands and for recovery of Rs. 1,188 as assessment in respect of the lands from 1940-41 to 1945-46.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT

Resolution No. 6327-A.

Bombay Castle, 6th July 1948.

Endorsement by the Conservator of Forests, Central Circle, Poona, No. XXIX-120/11095 of 1947-48, dated the 14th February 1948—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE, (SENIOR DIVISION), BELGAUM.

Civil Suit No. 494 of 1946.

Madhavrao *alias* Babasaheb Haribar Ashtekar ... Plaintiff;

versus

The Secretary of State for India in Council represented by the Collector of Belgaum in the Province of Bombay ... ... Defendant.

Endorsement by the Commissioner, Southern Division, No. LST.-389, dated the 24th February 1948—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, No. 6327, dated the 6th July 1948—Forwarding Legal Department File No. 208 of 1926, containing Government Resolution, Legal Department, No. 2502, dated the 24th August 1926, a copy of the Me ‹randum of Instructions and 2 copies of the written statement with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the brief accompanying Government Resolution, Legal Department No. 2502, dated the 24th August 1926, and on additional grounds mentioned in the accompanying Memorandum of Instructions.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

original

G. R., No. 6327-A, L. D., dated the 6th July 1948.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Conservator of Forests, Central Circle, Belgaum,
* The Divisional Forest Officer, Belgaum,
The District Government Pleader, Belgaum (with two copies of the Memorandum of Instructions).

* With a copy of the Memorandum of Instructions.

No. of 1948.

Copy forwarded for information and guidance to

Issued
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MEMORANDUM OF INSTRUCTIONS.

The suit is filed by Madhavrao *alias* Babasaheb Harihar Ashtekar against the Secretary of State for India in Council. Plaintiff claims possession of Survey Nos. 26, 36, 38 and 39 of the Village of Panjanhatti, taluka Gokak, with mesne profits. In the alternative the plaintiff asks for a declaration that he is entitled to the assessment on these lands and for recovery of Rs. 1,188 as assessment in respect of the lands from 1940–41 to 1945–46. The plaintiff makes a claim to these lands as the purchaser for valuable consideration of the Inam village Panjanhatti from Virupax Chintaman Ashtekar by a registered sale-deed of 23rd March 1942.

The suit lands are forest lands in the Inam village of Panjanhatti. This village along with six other villages was held in Inam by one Annaji Narsinha. On his death in 1847 A.D. these villages were resumed by the British Government in accordance with the Inam Commission's decision. In 1859 on the recommendation of the Bombay Government, the Secretary of State* sanctioned the grant in Inam of these 7 villages to Konherrao Annaji *alias* Bapusaheb Shahapurkar in recognition of his meritorious services to the British Government during the mutiny of 1857. The grantee was informed that formal Sanad would be issued in due course.

*R. D., Vol. 68/1860, p. 215.

When the despatch of the Secretary of State was communicated to the Alienation Revenue Commissioner, that officer at once raised the question whether the grant included forest rights. Government having considered the matter decided that the grant did not include such rights in accordance with the Circular Order issued in 1851 (Government Resolution No. 2390, dated 4th July 1860). The Collector of Belgaum also informed the Inamdar on 4th May 1860 that the grant did not include forest or abkari rights.* Since then the Inamdars were informed from time to time that they had no claim to teak trees and other forest rights in these villages.

Do. p. 219.

Do. p. 221.

* This reference is not available.

In 1882 the forest lands in the villages of Panjanhatti and the six other villages were declared to be protected forests under Chapter IV of the Indian Forests Act of 1878. Although the abkari and forest rights were from the first excluded, the Inamdar and his heirs continued trying to get these rights or to have them recognised as already granted. Therefore in Government Resolution, Revenue Department, No. 4762/73, Confl., dated 15th May 1906 the position of the Inamdar in respect of his right was again made clear.

Confl. R. D., Vol. 578/1906, p. 35.

Finally by Government Resolution, Revenue Department, No. 692/24 Confl., dated 22nd January 1914 the forest lands and these seven villages including the land in the present suit were declared to be Reserved Forests under section 19 of the Indian Forests Act of 1878 (now section 20 of the Indian Forests Act, 1927).

File I, p. 21.

The village of Yadalgud was another of the seven villages granted in Inam to Konherrao. In 1922 that village was purchased by one Ramchandra Narayan Kini, a retired Government servant from the successors of the original Inamdars. He then made representations to Government for the restoration of Survey Nos. 37 and 8 which were forest lands in the village of Yedalgud, but Government declined to reopen the question. Thereupon Mr. Kini filed Civil Suit No. 1 of 1926 in the District Court at Belgaum. It was later transferred to the Court of the First Class Subordinate Judge, Belgaum, and renumbered as 295 of 1927. The plaintiff in that suit also claimed possession of the forest lands and mesne profits.

Government defended that suit on the lines of the brief accompanying Government Resolution, Legal Department, No. 2502, dated 27th August 1926. The Court decreed the suit in Mr. Kini's favour. It found on all issues against Government except that it held that the forest rights were reserved from the grant made to the plaintiff's predecessors. On the point of limitation the Court held that the starting

Judgment at p. 91 of suit file.

point of limitation was not the date when the lands were declared to be protected forest in 1882, but the date when they were declared to be reserved forest in 1914 and the suit having been filed within 12 years from that date was in time. On merits, the Court held that the grant was of the entire village and that even on the assumption that the grant was of the revenue alone, lands unassessed at the date of the grant were not excluded. The Court further held that although forest rights were reserved from the grant, it did not imply that when Government declared these lands to be reserved forest, these lands were forest lands or waste lands which were the property of Government or over which Government had proprietory rights or to the whole or any part of the forest produce of which Government was entitled within the meaning of section 3 of the Forest Act.

Government decided to prefer an appeal and the institution of the appeal was sanctioned in Government Resolution, Legal Department, No. 9035, dated 21st December 1931. Mr. Kini then submitted a Memorial to Government in which after dwelling at length upon the merits of his case he prayed that in view of his loyal and diligent services to Government, the Government should not continue the right but should withdraw the appeal. As Government's case was merely arguable and not particularly strong, it was decided to withdraw the appeal and the case was ultimately compromised upon certain terms which are set out in the consent decree. Suit file, p. 177. Suit file, p. 255.

In the present suit filed by Mr. Madhavrao Ashtekar the contentions and reliefs claimed are almost identical to those in Mr. Kini's suit. The Divisional Forest Officer has recommended that the suit should be defended on the same grounds as were taken in the previous suit. An exhaustive brief setting out all possible grounds of defence was prepared in that suit for the guidance of the District Government Pleader and it is not possible to add anything more to it. However, although Government's case is not very good on merits, on one point at least, namely, limitation, Government are in much stronger position now than in 1926. In Mr. Kini's suit the Court held that limitation began to run against the plaintiff from the date when the lands were declared as reserved forest in 1914. The same line of argument may be adopted in the present suit and it may be contended that the suit having been filed after the expiration of 12 years from the date on which the lands were constituted reserved forest under section 3 of the Forest Act is time-barred under article 144 of Schedule 1 to the Indian Limitation Act. Under the ruling in 32 Bom. 432, the Inamdar even though grantee of the royal share of the revenue could occupy and make best use of all such lands as were unoccupied at the date of the grant. If the suit lands are neither forest lands nor waste lands, which were the property of Government, or over which Government had proprietary rights or if Government are not entitled to the whole or any part of the forest produce of the said lands, Government had obviously no right to constitute them into reserved forest. Therefore when these lands were constituted into a reserved forest, the proprietary rights of the Inamdar were adversely affected and consequently the suit ought to have been filed within 12 years from the date on which the lands were converted into reserved forest. Government has, therefore, a strong case so far as the point of limitation is concerned.

In this suit however the plaintiff has made an alternative claim of assessment in respect of the suit lands. This kind of relief was not claimed by Mr. Kini in Suit No. 295 of 1927 and it therefore needs special consideration. In paragraph 1 of the plaint, the plaintiff has shown that Survey Nos. 26, 36 and 39 are assessed at Rs. 37, Rs. 66 and Rs. 95 respectively while the fourth land Survey No. 39 is shown as unassessed. In paragraph 3 of the plaint he claims possession of these lands on the basis of the Inam grant in

favour of Konherrao and then at the end of that paragraph it is contended that in the alternative he is entitled to a declaration of a right to recover assessment of these lands and to recovery of assessment for the years 1940-41 to 1945-46 at the aggregate rate of Rs. 193 per annum. The plaint does not disclose the grounds on which this alternative relief is claimed but the plaintiff might argue that if the original grant to Konherrao was a grant of the land revenue alone, the plaintiff is entitled at least to the assessment of these lands, if not to possession thereof. Such an argument would be entirely misconceived and is based upon a complete misunderstanding of the scope of the grantee's rights over the forest lands in the Inam villages. It is necessary to refer to the earlier records relating to the suit lands in order to see how far the plaintiff's alternative prayer for recovery of assessment can be granted.

The Inam grant to Konherrao consisted not only of the seven entire villages including Panjanhatti, but also of lands in 10 other villages. This is seen from paragraph 5 of the despatch dated 24th November 1859 from the Secretary of State for India, from the letter No. 649, dated 4th August 1860 from Mr. Seton Karr. Collector of Belgaum and from paragraph 2 of the report, dated 16th June 1881 by Mr. W. H. Horsley, Forest Settlement Officer, Belgaum. In his letter dated 4th August 1860, Mr. Seton Karr after pointing out that Government had in their No. 2460, dated 6th June 1860 sanctioned "the payment to Bapu Saheb (Konherrao) of the revenue realised during 1859-60 from the 7 villages and lands granted to him in Inam" raised the question of judi or quit rent which Bapu Saheb used to pay to Government when he formerly held the villages in Inam. In regranting the villages and lands in Inam, Government had decided that Bapu Saheb was not to be called on to pay the quit rent which he formerly paid (*vide* paragraph 7 of Mr. Seton Karr's letter). Referring to this decision Mr. Seton Karr showed that the grant of the 7 villages exempt from quit rent was more valuable to the Inamdar than the grant of both the lands and the villages subject to the payment of quit rent. We, therefore, proposed that the Inamdar should be given the option of receiving the 7 villages only, free from quit rent, or, of retaining both the lands and villages and paying the quit rent. Government agreed to the proposal of Mr. Seton Karr to give the option to the Inamdar (*vide* Government letter, Political Department, No. 3309, dated 24th August 1860). Mr. Horsley's report dated 16th June 1861 to which reference will be made hereafter shows that the Inamdars agreed to keep the lands as well as the villages on payment of judi.

R. D., Vol. 68/1860, p. 215.

Do. p. 227.

R. D., Vol. 78/1881, p. 201.

R. D., Vol. 68/1860, p. 233.

On 2nd April 1879, the sons of Konherrao made a petition to Government complaining of an order issued by the Collector of Belgaum prohibiting them from cutting firewood and timber in the forests of the Inam villages, but in Government Resolution, Revenue Department, No. 4154, dated 8th August 1879, Government decided not to interfere with the proceedings of the local officers but directed that the Inamdars were not forbidden to remove bushes and low jungle. With reference to this resolution the Conservator of Forests in his report No. 2876, dated 6th December 1879 said that the right given to the Inamdars under that resolution to cut bushes and low jungle would enable them to clear away three-fourths of the trees on the Ashtagi, Kabalapur and Bammanhatti hills and suggested that in case there may be difficulty in cancelling or altering the former resolution, clause (*b*) of section 29 of the Indian Forest Act of 1878 be applied to them forthwith. Government accepted this proposal and in Resolution No. 554, dated 31st January 1880 directed that a portion of the forests in question should be declared closed for 20 years by a notification and that all rights, if any, of the Inamdars over such portions shall be suspended during that period. It was also directed that sufficient forest should be left open to enable the Inamdars to cut bushes and low jungle to meet their own

R. D., Vol. 184/1879, p. 363.

Do. p. 389.

R. D., Vol. 163/1880, p. 377.

Do. p. 395.

actual requirements but not for the purpose of sale. Government also invited a report as to the grounds on which it was considered that the Inamdars might have a claim for the compensation and what would be the amount of such compensation.

Pursuant to these orders, the Conservator of Forests submitted to Government his report No. 1655, dated 25th June 1880. This was accompanied by a report from Mr. Horsley, dated 8th May 1880. These two reports showed that the Inamdars had to be compensated for their right to graze their own cattle in the forests and for the right to recover grazing fees from other cattle owners. The average of these grazing fees were worked out as Rs. 64 per annum and 25 per cent. of it was added as the value of the grazing reserve to the Inamdar's own cattle. Thus a total compensation of Rs. 80 per annum was recommended. However, on 30th September 1880, the Collector reported that the Inamdar was unwilling to accept compensation of Rs. 80 per annum for 20 years or to have it commuted to 20 years in consideration of his giving up his grazing right. Thereupon in Resolution No. 6051, dated 16th November 1880 Government called for information as to what were the Inamdar's rights in the forest lands and as to the amount of compensation which the Inamdar would accept.

R. D., Vol. 163/1880, p. 397.
Do. p. 401.
Do. p. 411.
Do. p. 423.

The information required by Government in the Resolution of 16th November 1881 was supplied in Mr. Horsley's report No. 111, dated 16th June 1818. Mr. Horsley stated that the forest lands of the villages were the property of Government or over which Government had proprietary right or to the whole or part of the produce of which Government were entitled and therefore there was no reason why they should not notify as protected forests. The only right which the Inamdar had was the right to use grass for grazing and the privilege to remove bushes and low jungle. The most important point what emerges from Mr. Horsley's report and from the Inamdar's statement accompanying it is that this right of grazing seems to have been conceded in lieu of payment of judi of one anna per Rupee of the grazing valuation of the forest land which was fixed at Re. 0-2-6 per acre. This is admitted by the Inamdars in their statement, dated 9th June 1881.

R. D., Vol. 78/1881, p. 201.
Do. p. 211.

As regards the compensation payable to the Inamdars, since they had not accepted the payment of Rs. 80 per annum, Mr. Horsley recommended that Government should assess the "present" value of the forest lands and sell them to the Inamdars at that valuation.

Government did not accept Mr. Horsley's proposal. In Government Resolution, Revenue Department, No. 7326, dated 3rd December 1881 it was held that the Inamdars of these villages could lay claim to no forest right except rights of grazing under privileges granted to them by Government and terminable at the pleasure of Government of cutting bushes and low jungle for their actual and legitimate requirements. Since the Inamdars refused to accept the compensation for their grazing right, Government directed that the lands should be notified as protected forest and a separate notification should be issued under section 29-B, of the Indian Forest Act, 1878, closing portions of these forests for 20 years and suspending the rights of private persons over the portions so closed for that period. Accordingly by Government Resolution, Revenue Department, No. 3401, dated 23rd May 1882, the forest lands including the 4 suit lands in the village of Panjanhatti were declared protected forests under section 28 of the Indian Forest Act of 1878. By another Notification No. 3401-A of the same date the forest lands in the villages of Ashtagi and Barmanhatti were declared closed for a term of 20 years under section 29B. Finally the Notification No. 693 of 22nd January 1914 declared these lands to be reserved forests under section 19 of the Indian Forest Act of 1878.

Do. p. 235.
B. G. G., 1882, Part I, p. 371.
B. G. G., 1914, Part I, pp. 165-66.

The foregoing detailed survey of the earlier record leading to the following conclusions :—

(1) The Inamdars were entitled to the revenue of the seven Inam villages and the lands in other villages.

(2) Whatever be the nature of the grant (whether of soil or of the royal share of the revenue) it did not include any rights in respect of the forest lands which were excluded from the grant.

(3) The Inamdars could not therefore claim possession of the lands; *a fortiori*, they could not claim land revenue assessment, if any in respect of the forest lands.

(4) The only claim which the Inamdars had over the forests was a right of grazing and the privilege of cutting bushes and low jungle which was granted by and terminable at the pleasure of Government.

The record clearly shows that the Inamdars had no other right over the forest lands, much less a right to recover assessment. Moreover, the right of grazing in the forest was exercisable on payment of judi of one anna per Rupee of the grazing valuation of the land which was assessed at Rs. 0-2-6 per acre. The figures which are given by the plaintiff in paragraph 1 of the plaint are the figures of the grazing valuation of the forest lands as Re. 0-2-6 per acre. They are not the figures of the land revenue assessment The suit lands were not assessed for the purpose of land revenue. They were all along unassessed waste as is clearly seen from Government Notifications of 23rd May 1882 and 22nd January 1914. The lands being unassessed there could not be a right to recover the land revenue assessment. Therefore the plaintiff's claim to recover assessment at the aggregate rate of Rs. 198 per annum is clearly misconceived and cannot be granted.

In addition another technical plea must be taken. The suit has been filed against the Secretary of State for India in Council, a body which has ceased to exist since 1937. The suit is, therfore, *prima facie* not maintainable as framed at present. The proper authority to be named as defendant is the Province of Bombay. However, the plantiff may perhaps get over this difficulty by seeking an amendment to the plaint. The amendment may possibly be allowed since the notice given by him under section 80 of the Civil Procedure Code is free from any legal objection. Nevertheless the formal objection on the frame of the suit should also be taken.

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Suits:
Belgaum.
For possession of Survey Nos. 26, 36, 38 and 39 of the village of Panjanhatti, taluka Gokak, with mesne profits. In the alternative for a declaration that plaintiff is entitled to the assessment on these lands and for recovery of Rs. 1,188/- as assessment in respect of the lands from 1940-41 to 1945-46.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 14086
Bombay Castle, 6th Dec. 1949.

Read G.R., L.D., No. 6327-A dated the 6th July 1948.

Letter from the District Government Pleader, Belgaum, No. Ref. OS.494 of 1946 dated the 31st August 1949 forwarding uncertified copy of judgment and stating that the suit noted in the margin was decided by the Jt. Civil Judge S.D. Belgaum, on 19th August 1949, when the following order was passed:-

In the Court of the Civil Judge, (Senior Division), Belgaum.
Civil Suit No. 494 of 1946.
Madhavrao alias Babasaheb - Harihar Ashtekar ..... Plaintiff;
Versus
The Secretary of State for India in Council represented by the Collector of Belgaum in the Province of Bombay.....Defendant.

"Plaintiff's suit stands dismissed. The Plaintiff do pay the costs of the defendant and bear his own.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

original

R.M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department.
The Commissioner, Southern Division.
The Conservator of Forests, Central Circle, Belgaum.
The Divisional Forest Officer, Belgaum.

subject for signature
P.S.

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Record after receipt
File in S. Belgium/49 (new)

7/12

7/12

41 AK

IN THE HIGH COURT OF JUDICATURE ~~AT~~ AT BOMBAY. 153

First Appeal No. 22 of 1950.

Madhavrao alias Babasaheb Harihar Ashtekar, of Shahapur, Dist. Belgaum | Appellant(Orig. Plff.)

V E R S U S.

1. The state of Bombay formerly the Province of Bombay, represented by the Collector of the District of Belgaum, Belgaum. | Respondent (Original Deft.).

Claim Rs. 1485-500 for Court fee
" 7,305-0- for Advocate's f

The Appellant above-named begs to appeal against the decree dated 19-8-1949 of the lower Court in Special Civil Suit No. 494 of 1946 of the file of the Joint Civil Judge at Belgaum on the following among other grounds:-----

(1) The decree of the lower Court is erroneous and contrary to law and weight of the evidence on record.

(2) The lower Court erred in not clearly deciding issue No. 1.

(3) The lower Court erred in not holding that the defendant did not recognise the inclusion of the suit lands in the Sanad as correct.

(4) The lower Court ought to held that the Sanad is binding on the defendant and the defendant must act upto it.

(5) The lower Court ought to have held that the declaration made in 1891 (as per Ex.91) could not take away the right given under the Sanad.

(6) The lower Court ought to have held that the declara of suit lands as protected forests under Section 29(b) w ultra vires.

(7) The lower Court ought to have held that even if the suit lands could be treated as protected forests The rights of the predecessors-in-title of the plaintif and ~~the~~ the plaintiff to enjoy the forest as their own

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own could not be affected.

(8) The lower Court at any rate should have held that the predecessors-in-title of the plaintiff and the plaintif were entitled to enjoy the suit lands as their own subject to the laws relating to the protected forest.

(9) That the G.R. of 1914 (Exs. 92 and 93) did not in any way affect the rights granted under the Sanad of 1884.

(10) The lower Court ought to have held that the Inamdars availed of the concession given by the government and accepted the alternative offer to reduce the quit rent out of Rs. 467-12-0, the full assessment of 20 lands in consideration of the Forest rights over the suit lands.

(11) The lower Court ought to have held that the rights given by His Majesty's government by the order of the Secre-tary of State for India could not be curtailed by the G.R.s and the Bombay Government.

(12) If at all there was any mistake, it could only have been corrected by the proper authority and not be goverı -ment Resolution of Bombay Government.

(13) The lower Court ought to have held that the defendant was estopped from ascertaining its rights over the suit lands in view of its admission of Inamdar's title over the lands in the documents prepared by itself as per Exs. 24-30 and 94.

(14) The lower Court ought to have held that government had ~~else~~ the forest rights only in unalienated villages.

(15) At the most the forest rights of the government could have in respect of certain kinds of trees only and not all trees.

(16) The lower Court erred in holding that Sections 40 and 4 of the land Revenue Code were not applicable to this case.

(17) The lower Court ought to have held that the Sanad was binding on the government and even though there was a mistake according to it, it is still binding because of

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Secs. 20, 22 and 23 of the Contract Act.

(18) The weight has not been given to Exs. 24 to 32.

(19) The defendant ought not to have been allowed to plead adverse possession.

(20) The lower Court erred and failed to appreciate that the suit was for specific performanance of a contract under Section 25 of the Indian Contract Act, by way of of possession and attached Art. 113 and Sec. 29 of the Limitation Act.

(21) At any rate Governement's possession was not adverse to the plaintiff's predecessors-in-title.

(22) The lower Court erred in holding that the rulings cited in para 8 of the judgment, did not apply to the facts of their case, .

(23) The lower Court ought to have held that possession by the Government was at its best under a mistake and hence there was not the necessary animus to perfect title by adverse possession.

(24) The revenue records kept by Government, bears this out.

(25) The lower Court erred in holding that the suit is barred under articles 142 and 144 of the Indian Limitation Act.

(26) The lower Court ought to have held that the suit is Governed by Art. 113 of the Indian Limitation Act.

(27) The lower Court ought to have held that the Bombay Government were the trustees for Konneraoas the crown (through the Secretary of State, ordered the Bombay Government to give seven villages and twenty lands, and that it was the duty of the Government to give possession of them to him.

(28) The lower Court ought to have held that the suit was not barred as contract under Sec. 25 was exempted by Sec. 29 of the Indian Limitation Act.

(29) The lower Court ought to have held that the suit is in time.

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(30) The plaintiff should at least have been to be entitled to get assessment of the suit lands at the rate of Rs. 198/- per annum.

(31) A new case was made out for the defendant.

(32) Pleadings have not been properly construed.

(33) The order as to costs is erroneous.

(34) Issues have not been properly framed.

(35) Correct and legal inferences have not been drawn.

B O M B A Y.
Dated 10-12-1949.

V.N.Lokur.
Advocate for Appellant

PKD/

49 +77

DECREE. EX. 97.

(Original decree under o.20 rule 6,7 C.P.C.).

IN THE COURT OF THE CIVIL JUDGE,S.DN,BELGAUM.

REGULAR CIVIL SUIT No. 494 of 1946.

1. Madhavrao alias Babasaheb Harihar, Astekar,Caste Brahmin,age 49, occ.Land lord of Shahapur Sangli State -- Plff.

Against.

1. The Province of Bombay, amended as per ex95 represented by the Collectof of the Dist. of Belgaum, Belgaum in the province. -Deft.

Filed on :- 8-11-1946.

Registered on:-15-11-46.

Claim Rs. ~~1-485-5-0~~ for the Court fees and

" 7,305- 0-0 for Jurisdiction.

Herein, the above named plff begs to state as unde

1. The lands in suit are entire survey numbers and ar situate in Panjanhatti in Gokak taluka and are as under:-

S.No.	Acre	Assessment	Market value.
26	235-22	Rs.37-0-0	Rs. 800/-
36	432-35	Rs.66-0-0	Rs. 2000/-
38	602- 4	Rs. 95-0-0	Rs. 3500/-
39	255-24	nil	Rs. 1000/-

2. By a special despatch of the Secretary of State for India for India dated the 15th of March 1860, the - Secre tary of State for India on behalf of His Mejesty's Govemnment agreed to grant an Inam to Konherao Annaji Shahapurkar,comonly known as Bapusaheb Shahapurkar the ent village of Pnajanhatti and six other entire villages for valuable service already and voluntarily rendered to the Govt during the disturbances of 1857-58. A sanad was -- accordingly issued in the year 1884.and was received and accepted by Radhabai Br.Virupax,the daughter-in-law and he of the said Konherao.In virtue of the promised grat, the grantee,Konherao became fully entitled to the entire - village of the Panjanhatti and was put into possession of the lands in the said village except the suit lands. In ~~xxx xxxx~~ the possession of the lands in suit was not -- delivered to the grantee under mistaken notice of the - rights of the grantor and the grantee in regard to forest rights and Sheri or waste lands in the Inam village under

under the Summary Settlement.

3. All the rights of the grantee, Konherao, in the entire village of Panjanhatti including the forest and waste area - otgether with the forest rights and the right to all socalled reserved trees and to all minerals were ultimately inherited by Virupax Chintaman transfer ed for valuable consideration th whole of his aforesaid rights in the Inam village of Paajanhat in favour of his cousin, the present plff, by registered sale-deed dated the 2nd of March 1942. Consequently the plff has become - entitled to the lands in suit and to possession thereof. On discovering that the grant of the entire village of Paajanhatti was a British Crown grant and that it was made for services already and voluntarily rendered and that is an Inam under the summery Settlement and that Govt. or Belgaum Collectorate had failed ultra vires to deliver possession of the lands in suit under mistake, the plff called upon the Collector of Belgaum representing the defi by notice dated 17-5-1945, to carry our specifically the contract the grat in regard to the suit lands by delivering to t e plff. the possession thereof. As the Plff's notice of demand was neither -- replied to nor complied with, the plff has to file the present suit for possession of the suit lands as owner and for an account of the profits received by the Deft. in respect of the suit lands, or in tl alternative, for adeclaration that the plff is entitled to recover the assessment levied and to be levied upon the suit lands and for an amount of the 6 years assessment from the deft in respect of - the suit lands from 1940-41 to 1945-46. The cause of action arose when the notice ofdemand given by the plff went unheeded by the - deft, that is tosay, after 17-6-1945.

4. As the value of the property in suit is more than Rs.500/- this suit is filed within the special jurisdiction of this court.

6. The claim for the court fee is valued as under. For -- possession of the suit lands- total assessment Rs.198-x4½-Rs.1485.

For accounts of profits Rs. 5/-

So, a total court fee of Rs. 125-8-0 is paid. As the court fee payab on the alternative relief is less than the court fee paid. No additi al fee is required to be paid. The value of the jurisdiction is the value of the suit lands and the value for accoumt, that it to say Rs. 7300+5* 7305/-

6. Notice of this suit as required by section 80 of the Civil Procedure, has been duly given to the deft.

7 The original sanad issued by Govt.to the grantee was required by Govt.to be produced before than many years ago. It is still with the Govt.A list of documents by the plff is annexed to the plaintif.The plff prays for a leave to produce the additional documents evidence letter on,if and when necessary.

8. The plff prays a decree:-

1. for possession, as owner of the lands in suit and

2. for payment on account of mense profits of the suit lands received by the deft.

3. for a declaration that the plff is entitled to - recover the assessment levied and to be levied in respect the suit lands.

4. for recovery of Rs 1188/- being the assessment c the suit lands due from the deft from 1940-41 to 1945-46.

5. for costs of this suit and,

6. for any relief either in law or in equity to which t plff may be entitled.

This suit coming on this day before M.H.Kazi Esq.Jt Civil Judge,Belgaum, in the presence of Mr.V.D.Belavi - Pleader for the plff and Mr.B.V.Jakati.Pleader,for the def it is hereby ordered and decreed that Plff's suit is stand dismssed.The plff do pay the costs of the deft and to bear own.

BILL OF COSTS.

	Plff.	Deft.
1. Stamp for plaintiff.	125-8-0	0-0-0
2. -do- for vakalat	0-10-0	0-10-0
3. Pleader's fee on Rs.7305/-one set	196-0-0	196-0-0
4. Process fee.	22-8-0	0-0-0
5. Stamps on exs.	3-12-0	0-0-0
6. Copying fees.	5-12-3	0-0-0
7. Witness potgi	14-0-0	0-0-0
	368-2- 3	196-10-0

rejected costs for applications. Plff Deft.

3-12-0 15-10-0

Given under my hand ~~of~~ seal of the court this 19th day of august 1949.

Sd.R.B.Shinde,
Clerk.

Sd. M.M.Kazi.
Jd.Civil Judge,S.D.Belgaum,
19-9-49.

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Suits
Belgaum.
For possession of Survey Nos.26,36, 38 and 39 of the village of Panjanhatti, taluka Gokak, with mesne profits. In the alternative for a declaration that plaintiff is entitled to the assessment on these lands and for recovery of Rs.1,188/-as assessment in respect of the lands from 1940-41 to 1945-46.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 15465
ombay Castle, 6th November 1950.

Read Government Resolution, Legal Department, No.14086, dated 6th December 1949.

Letter from the Collector of Belgaum No.L.A.W. 677, dated 14th October 1950 forwarding a Memorandum of Appeal No. 22 of 1950 filed by the plaintiff in the suit noted in the margin and requesting Government's sanction to defence of the appeal.

In the Court of the Civil Judge,(Senior Division) Belgaum.	:
Civil Suit No. 494 of 1946.	:
Madhavrao alias Babasaheb Harihar Ashtekar . . . . . Plaintiff;	:
Vs.	:
The Secretary of State for India in Council represented by the Collector of Belgaum in the Province of Bombay. . . . . Defendant.	:

RESOLUTION :- Sanction is accorded to the defence of the Civil Appeal No. 22 of 1950 in the Hight Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department No. 6327-A, dated 6th July 1948 and the favourable grounds contained in the judgment of the Civil Judge,(Senior Division), Belgaum dated 19th August 1949.

By order of the Governor of Bombay,

original

E.P. Bhamgara
Additional Assistant Secretary to Government.

To,
The Revenue Department,
The Conservator of Forests, Central Circle, Belgaum.
The Divisional Forest Officer, Belgaum,
The District Government Pleader, Belgaum,
The Collector of Belgaum,
The Government Pleader, High Court, Bombay.

Issued 6/11

HSP
3/11

K.492. Rs.As.Ps.(Fl.1) Typed by Mr.P.J.Vyas.

Copying & comparing charges. 0 -6 -0 Examined by Mr. D.D. Parashar

Paper charges. 0 -0 -3 Read by Mr. D.T. Ratnaparkhi

Total Rs. 0 -6 -3

Total Annas six and pies three only.

Superintendent.
Decree Department.
29-10-1952.

Copy applied for on 9-9-52
Copy ready on 29-10-52
Copy delivered on 22-1-53
sent by V.P.P. or Regd. Post

Assistant Shirastedar

In the High Court of Judicature at Bombay.

Order passed by the High Court in the case of:-

Madhavrao alias Babasaheb Hariharr Ashtekar.

(Original Plaintiff) .... Appellant.

Versus.

The State of Bombay formerly the Province of Bombay represented by the Collector of the District of Belgaum.

(Original Defendant) ... ... Respondent.

Being First Appeal No. 22 of 1950.

HIGH COURT APPELLATE SIDE BOMBAY Certified COPY

Mr. V.N. Lokur, Advocate for the Appellant.

The Government Pleader for the Respondent.

Order passed by the Registrar;-

Appeal withdrawn. Appellant to pay costs to the other side and bear his own.

....

4-9-1952.

Sd/. S. H. Belavadi.
Deputy Registrar.

...

True Copy.

for Deputy Registrar.

The 27th day of October 1952.

K.492.

Copying & comparing charges. 4 -8 -0 - - Examined by Mr. S.D. Pandit

Paper charges. 0 -0 -9 Read by Mr. D.T. Patwardhan

Total Rs. 4 -8 -9

Rupees four, annas eight and pies nine only.

Superintendent.
Decree Department.
29-10-1952.

Copy applied for on 9-9-52
Copy ready on 29-10-52
Copy delivered on 22-1-53
Sent by V.P.P. Regd. Post on

Assistant Sheristedar

In the High Court of Judicature at Bombay.

Thursday the 4th day of September 1952.

Appeal No.22 of 1950 from Original Decree.

Madhavrao alias Babasaheb Harihar Ashtekar.

(Original Plaintiff) ... . Appellant.

Versus.

The State of Bombay formerly the Province of Bombay represent by the Collector of the District of Belgaum.

(Original Defendant) ... ... Respondent.

Claim:- Rs. 1,485-5-0
Rs. 7,305-0-0 for Advocate's fees.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

The Plaintiff sued to recover possession of the suit properties together with mesne profits and costs of the suit, in the alternative to recover future assessment amount of the suit lands together with past six years dues.

The Special Suit No.494 of 1946 was decided by the Join Civil Judge (S.D.) of Belgaum who dismissed it and ordered Plaintiff to pay costs of the Defendant and to bear his own.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr.Justice Gajendragadkar on the 19th day of January 1950.

The grounds of objection to the decision appealed against are:-

1. The decree of the lower court is erroneous and contrary to law and weight of the evidence on record.

2. The lower court erred in not clearly deciding Issue No.

3. The lower court erred in not holding that the Defendant did not recognise the inclusion of the suit lands in the Sanad as correct.

4. The lower court ought to have held that the Sanad is binding on the Defendant and the Defendant must act upto it.

5. The lower court ought to have held that declaration made in 1891 (As per exhibit 91) could not take away the rights given under the Sanad.

6. The lower court ought to have held that the declaration of suit lands as protected forests under Section 29(b) was ultra vires.

7. The lower court ought to have held that even if the suit lands could be treated as protected forests the rights of the predecessors-in-title of the Plaintiff and the Plaintiff to enjoy the forest as their own could not be affected.

8. The lower court at any rate should have held that the predecessor-in-title of the Plaintiff and the Plaintiff were entitled to enjoy the suit lands as their own subject to the laws relating to the protected forest.

9. That the G.R. of 1914 (Exhibits 92 and 93) did not in any way affect the rights granted under the Sanad of 1884.

10. The lower court ought to have held that the Inamdars availed of the concession given by the Government and accepte the alternative offer to reduce the quit rent out of Rs. 457-12-0 , the full assessment of 20 lands in consideration of the forest rights over the suit lands.

11. The lower court ought to have held that the rights given by His Majesty's Government by the order of the Secretary of State for India could not be curtailed by the G.R.s and the Bombay Government.

12. If at all there was any mistake, it could only have been corrected by the proper authority and not by Government Resulution of Bombay Government.

13. The lower court ought to have held that the Defendant was estapped from ascertaining its rights over the suit lands in view of its admission of Inamdar's

title over the lands in the documents prepared by itself as per Exhibits 24 to 30 and 94.

14. The lower court ought to have held that Government had the forest rights only in unalienated villages.

15. At the most the forest rights of the Government could have in respect of certain kinds of trees only and not all trees.

16. The lower court erred in holding that Sections 40 and 41 of the Land Revenue Code were not applicable to this case.

17. The lower court ought to have held that the Sanad was binding on the Government and even though there was a mistake according to it, it is still binding because of Sections 20, 22 and 23 of the Contract Act.

18. Due weight has not been given to Exhibits 24 to 32.

19. The defendant ought not to have been allowed to plead adverse possession.

20. The lower court erred and failed to appreciate that the suit was for specific performance of a contract under Section 25 of the Indian Contract Act, by way of possession and attracted Article 113 and Section 29 of the Limitation Act.

21. At any rate Government's possession was not adverse to the Plaintiff's predecessors-in-title.

22. The lower court erred in holding that the rulings cited in para 8 of the judgment, did not apply to the facts of their case.

23. The lower court ought to have held that possession by the Government was at its best under a mistake and hence there was not the necessary animus to perfect title by adverse possession.

24. The Revenue Records kept by Government bears this out.

25. The lower court erred in holding that the suit is barred under Articles ~~124~~ 142 and 144 of the Indian Limitation Act.

26. The lower court ought to have held that the suit is in time because of Article 113, Indian Limitation Act.

27. The lower court ought to have held that the Bombay Government were the trustees for Konherrao as the Crown (through the Secretary of state, had ordered the Bombay Government to give seven villages and twenty lands, and that it was the duty of the Government to give possession of them to him.

28. The lower court ought to have held the suit was not barred by limitation, it being a contract under Section 25 of the Contract Act and as such exempted by Section 29 of the Indian Limitation Act.

29. The lower court ought to have held that the suit is in time.

30. The Plaintiff should at least have been to be entitled to get assessment of the suit lands at the rate of Rs.198 per annum.

31. A new case was made out for the Defendant.

32. Pleadings have not been properly construed.

33. The order as to costs is erroneous.

34. Issues have not been properly framed.

35. Correct and legal inferences have not been drawn.

Order passed by the Registrar.

Appeal withdrawn. Appellant to pay costs to the other side and bear his own.

4-9-1952. Sd/. S.H. Belavadi.
Deputy Registrar.

Bill of Costs in the High Court.

By the Appellant.	Rs.As.Ps.
Stamps for Memorandum of Appeal.	125 -0 -0
Stamps for copies of decree, order & Judgment.	1-14 -0
Stamps for Vakalatnama.	2 -8 -0
Bhatta for process.	5 -0 -0
Sectioner's fee.	27 -3 -0
Advocate's fee.(One fourth)	59 -0 -4
Printing charges.	11 -0 -0
Copying charges for preparing paper-books.	5 -6 -0
Stamp for affidavit.	0 -5 -0
Total Rs.	237 -4 -4

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By the Respondent.	Rs.As.Ps.
Stamps for Vakalatnama. (G.P.Appears)	0 -0 -0
Advocate's fee. (One fourth)	59 -0 -4
Copying Fee under Rule 125 of the High Court, Appellate Side, Rules, 1950.	29 -0 -0
Total Rs.	88 -0 -4

(Seal) Sd/. S. H. Belavadi.

Deputy Registrar.

The 4th day of September 1952

....

True Copy.

for Deputy Registrar.

The 29th day of October 1952.

Suits.
Belgaum.
For possession of survey Nos.26,36,38, and 39 of the village of Panjanhatti, taluka Gokak, with mesne profits. In the alternative for a declaration that plaintiff is entitled to the assessment on these lands and for recovery of Rs.1,188/- as assessment in respect of the lands from 1940-41 to 1945-46..

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1059 0/E
Bombay Castle, 6th May 1953.

Read Government Resolution, Legal Department No.15465, dated the 6th November 1950.

Letter from the Government Pleader, High Court,Bombay,

In the Court of the Civil Judge (Senior Division), Belgaum. Civil Suit No.494 of 1946. Madhavrao alias Babasaheb Harihar Ashtekar..... Plaintiff. vs. The Secretary of State for India in Council represented by the Collector of Belgaum in the Province of Bombay.. Defendant.	No.721 dated the 27th January 1953 stating that the

first Appeal No.22 of 1950 in the suit noted in the margin was decided by the High Court of Judicature at Bombay on the 4th September 1952, when the following order was passed:

" Appeal withdrawn, Appellant to pay costs to the other side and bear his own."

Letter from the Government Pleader,High Court,Bombay No.721,dated the 27th January 1953 forwarding certified copies of the judgment and decree.

RESOLUTION: The result of the Appeal is recorded.

By order and in the name of the
Governor of Bombay,

original R.T.Katarki
R.T.Katarki,
Deputy Secretary to Government.

To
The Revenue Department,
The Conservator of Forests, Central Circle, Belgaum,
The Divisional Forest Officer, Belgaum,
The District Government Pleader,Belgaum,
The Collector of Belgaum,
The Government Pleador,High Court,Bombay.

KML/29.4

Submitted for sanction
Sept 5/5
Sept 5.5.53 DS (Civil)

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